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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.T., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

C.T.,

Defendant and Appellant.

E074027

(Super.Ct.No. J268364)

OPINION

APPEAL from the Superior Court of San Bernardino County. Winston S. Keh,
Judge. Affirmed and remanded with directions.

Steven A. Brody, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney
General, Julie L. Garland, Senior Assistant Attorney General, Charles C. Ragland and
Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant C.T. (minor) admitted to assault by means likely to cause great bodily injury. As part of his disposition, the juvenile court ordered him to pay the victim \$5,695 in restitution. Afterwards, the Victim Compensation Board paid the victim \$1,818.31. The juvenile court ordered minor to repay the Victim Compensation Board but didn't reduce the original restitution award.

On appeal, minor argues the juvenile court erred by failing to reduce the original restitution award by the amount the Victim Restitution Board paid to the victim. The People agree, but argue he forfeited this argument. We remand to the juvenile court with directions to reduce the direct victim restitution owed to account for the amount already paid by the Victim Compensation Board.

I

FACTS

On September 18, 2017, the San Bernardino County District Attorney filed a petition under Welfare and Institutions Code section 602 alleging minor committed kidnapping to commit robbery (Pen. Code, § 209, subd. (b)(1)), assault by means likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(4)), false imprisonment (Pen. Code, § 236) and first degree residential burglary (Pen. Code, § 459). On June 29, 2018, Minor admitted to committing assault by means likely to cause great bodily injury. The juvenile court placed him on probation in his father's custody.

The parties also stipulated, and the juvenile court ordered, minor would pay his victim \$5,695 in direct victim restitution. On October 9, 2019, the California Victim

Compensation Board filed a restitution request indicating they paid the victim \$1,818.31 and requesting the juvenile court order minor to pay restitution in this amount directly to them. On October 30, 2019, the juvenile court held a restitution hearing. Minor's counsel argued against imposing additional restitution because the Victim Compensation Board was not a direct victim and therefore not entitled to any amount of restitution.

Nevertheless, the juvenile court ordered minor to pay \$1,818.31¹ to the Victim Compensation Board over defense counsel's objections as term No. 34 of his probation.

Minor timely appealed the juvenile court's order imposing probation term No. 34.

II

ANALYSIS

Minor argues the juvenile court erred by ordering him to repay the Victim Compensation Board for the amount it paid to the victim without reducing the amount he is required to pay to the victim directly by the same amount. The People agree, but argue the claim is forfeited.

A. *Minor Did Not Forfeit His Claim*

“Claims of error relating to sentences “which, though otherwise permitted by law, were imposed *in a procedurally or factually flawed manner*” are waived on appeal if not first raised in the trial court.” (*People v. Garcia* (2010) 185 Cal.App.4th 1203, 1218.)

“An objection to the amount of restitution may be forfeited if not raised in the trial court.” (*Ibid.*) However, one exception to this general rule is where the sentence is

¹ Erroneously stated as “\$1,815.51” by the court.

unauthorized. “[A] sentence is generally “unauthorized” where it could not lawfully be imposed under any circumstance in the particular case.’ [Citation.] ‘An obvious legal error at sentencing that is “correctable without referring to factual findings in the record or remanding for further findings” is not subject to forfeiture.’” (*People v. Anderson* (2010) 50 Cal.4th 19, 26.)

Minor’s claimed error falls into this exception. Neither party disputes the amount of restitution, nor the restitution order itself. The only issue is whether probation term No. 34, requiring payment to the Victim Compensation Board, is duplicative of the stipulated restitution owed to the victim. As the People admit, the only possible factual dispute is “whether the restitution awards to the Victim Compensation Board and to [the victim] are duplicative in part,” and that we should find forfeiture if we “find[] the record is unclear” on this point.

But Penal Code section 1202.4, subdivision (f)(4)(A), is clear. “If, as a result of the defendant’s conduct, the Restitution Fund has provided assistance to or on behalf of a victim . . . the amount of assistance provided shall be presumed to be a direct result of the defendant’s criminal conduct.” The People point to no evidence in the record rebutting this presumption; in fact, they concede in their brief that “there is nothing in the record indicating the original restitution award to [the victim] did not cover all of his losses from [minor’s] conduct or that the amount paid by the Board to [the victim] was for losses separate from the losses covered by the original restitution award.”

Because there is no relevant factual dispute, the alleged error is ““correctable without referring to factual findings in the record or remanding for further findings’ [and] is not subject to forfeiture.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 887.)

B. The Court Erred by Not Reducing the Direct Restitution Order

““An order of direct victim restitution [in a juvenile case] acts to make the victim whole, rehabilitate the minor, and deter future delinquent behavior [citations], and is reviewed for abuse of discretion [citations].” (*In re S.E.* (2020) 46 Cal.App.5th 795, 803.) “However, where the specific issue is whether a court has the authority to issue restitution, we review that question of law independently.” (*In re S.O.* (2018) 24 Cal.App.5th 1094, 1098.)

“Victims are only entitled to an amount of restitution so as to make them whole, but nothing more, from their actual losses arising out of the defendants’ criminal behavior.” (*People v. Busser* (2010) 186 Cal.App.4th 1503, 1510.) “If a victim has received compensation from the Restitution Fund, the defendant must pay the amount thus compensated to the Restitution Fund rather than to the victim.” (*People v. Giordano* (2007) 42 Cal.4th 644, 654; see *People v. Evans* (2019) 39 Cal.App.5th 771, 778; *People v. Holman* (2013) 214 Cal.App.4th 1438, 1452.) Thus, as the People themselves put it, “it would appear that under juvenile law any restitution amount paid to the victim by the Victim Compensation Board that duplicates a restitution award to the victim should be reduced from the restitution award to the victim.”

We agree with the People and minor that the court erred by awarding \$1,818.31 to the Victim Compensation Board plus \$5,695 in direct victim restitution because the total amount is duplicative. Accordingly, we exercise our independent authority to modify the direct restitution order. (See *People v. Scarbrough* (2019) 40 Cal.App.5th 550, 554 [exercising independent authority to strike restitution order]; Pen. Code, § 1260.)

III

DISPOSITION

We modify the restitution order by reducing the direct victim restitution award to \$3,876.69. We remand the matter for the limited purpose of directing the juvenile court to prepare an amended abstract of judgment and order for victim restitution, and to forward a certified copy of the amended abstract of judgment and order for victim restitution to the Department of Corrections and Rehabilitation. We affirm the judgment in all other respects.

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SLOUGH

J.

We concur:

MILLER

Acting P. J.

RAPHAEL

J.